

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Federal Communications Commission
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In the Matter of

Amendment of Part 95 of the
Commission's Rules to Establish
a Very Short Distance
Two-way Voice Radio Service

WT Docket No. 95-102
RM-8499

To: The Commission

OPPOSITION TO PETITION TO STAY

The Radio Shack Division of Tandy Corporation (Tandy), pursuant to Section 1.45(d) of the Commission's rules,¹ respectfully submits its opposition to the petition for stay of the Commission's Report and Order in the captioned proceeding,² filed by Corwin D. Moore and the Personal Radio Steering Group, Inc. on July 5, 1996 (the "Moore Petition"). The Commission's Report and Order establishes rules, which became effective July 8, 1996, governing the new Family Radio Service (FRS). The Moore Petition fails to demonstrate why those rules -- the result of several years of diligent effort by Commission staff -- should be delayed.

1. 47 C.F.R. § 1.45(d).

2. Report and Order released May 15, 1996, FCC 96-215, Federal Register Notice published June 6, 1996 at 61 Fed. Reg. 28768.

Petitioner has failed to meet the four factor test for granting stay requests required under Wisconsin Gas Co. v. FERC, 758 F.2d 669, (D.C. Cir. 1985) (*per curiam*).³ "The factors to be considered in determining whether a stay is warranted are: (1) the likelihood that the party seeking the stay will prevail on the merits . . . ; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay." Id. at 673-74. In balancing these factors, the Commission generally assigns more weight to the irreparable harm factor. See, e.g., Sevier Valley Broadcasting, Inc., 10 FCC Rcd 9795 n.1 (1995) ("Most significantly, White Pine has not shown that irreparable injury would occur absent a stay")

The Moore Petition asks this Commission to delay a new, innovative radio service that will undoubtedly and immediately benefit many Americans. In support of this extraordinary request, Mr. Moore claims that he will suffer irreparable harm if the FRS rules remain effective. Mr. Moore bases his irreparable harm theory on the unfounded assertion that FRS operations will interfere with his GMRS operations as a result of the use of FRS units in a repeater-station mode. See Moore Petition at 2.

As the Commission noted in its FRS Report and Order at ¶ 9, "claims of potential interference to GMRS system from the operation of FRS units are overstated." So too here. The Moore irreparable harm theory lacks merit. The FRS Rules adopted by the Commission do not permit the use of FRS units in a repeater-station mode. FRS Rule 3 (47 C.F.R. §

3. See also Washington Metro Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 842-43 (D.C. Cir. 1977).

95.193) enumerates the types of communications that may be conducted with an FRS unit; it does not permit repeater communications. FRS Rule 4 (47 C.F.R. § 95.194), moreover, forbids users from modifying FRS units or attaching any non-FCC certified apparatus to an FRS unit. Accordingly, the FRS Rules cannot be interpreted to permit the use of FRS units as repeaters.

Even if an FRS unit were used unlawfully as a repeater, the possibility of harm to Mr. Moore is virtually nonexistent. Such a repeater would have to be used in close proximity to Mr. Moore, on the same channel as Mr. Moore (there are 14 FRS channels), and at the exact same time as Mr. Moore, to even create a potential for interference. Even if all these events were to occur simultaneously, Mr. Moore's much higher powered GMRS transmission would stifle an FRS repeater which (accepting Mr. Moore's interpretation of the FRS rules) would have no more than a .5 watt transmission capability. The Moore Petition must be denied because it fails to make even a remote showing of the possibility of harm, much less irreparable harm. See Wisconsin Gas, 758 F.2d at 674 ("movant must provide proof . . . indicating that the harm is certain to occur in the near future").

Other factors also support denying the Moore Petition. It would ill serve the public interest to delay the FRS Rules to address Mr. Moore's speculative claims. The Family Radio Service will provide low cost, high quality, short-range communications capabilities not afforded by any existing or proposed radio service. FRS will enable millions of Americans -- especially small groups such as families, friends and colleagues -- to maintain close contact with only a modest investment.⁴ With a transmitter power of just 500

4. The cost of FRS transceivers is projected to be in the \$100-150 range.

milliwatts, a palm-sized FRS unit will provide clear, reliable communications for only pennies using small, dry cell batteries. With its superior FM communications quality, the FRS will enable individuals to maintain close contact in myriad situations. The FRS will provide all of these benefits to the public without the burdensome licensing and technical requirements that often deter potential users from many existing radio services. Delaying these benefits would deprive the public of the immediate and irrefutable benefits of the Family Radio Service and would be contrary to the public interest.

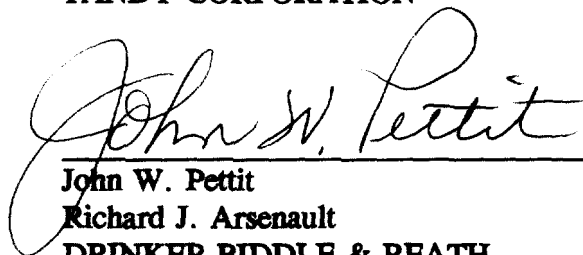
CONCLUSION

For the foregoing reasons, Tandy Corporation respectfully requests that the Commission deny the Moore Petition to Stay the Family Radio Service Report and Order.

July 9, 1996

Respectfully submitted,

**RADIO SHACK DIVISION OF
TANDY CORPORATION**

A handwritten signature in cursive script, reading "John W. Pettit", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Marjorie A. Schroeder, hereby certify that on this 9th day of July 1996 I caused a copy of the attached Opposition of Tandy Corporation to be served by hand delivery to the following:

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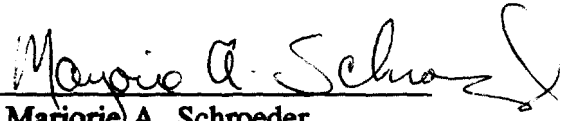
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